



Appeal Decision

by **A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 14 August 2025

Appeal Ref: APP/H1515/X/22/3302418

Building A, Meadow Farm, Beggar Hill, Fryerning CM4 0PG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended ("the 1990 Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Michael Merrigan against the decision of the Brentwood Borough Council.
- The application Ref 21/01690/S191, dated 30 September 2021, was refused by notice dated 10 March 2022.
- The application was made under section 191(1)(a) of the 1990 Act.
- The use for which a certificate of lawful use or development is sought is described in the application form as follows: "Retention of existing residential use at Building A".
- An application for costs is made by the appellant against the Council. This is subject of a separate Decision.

Decision

1. The appeal is dismissed.

Preliminary matters

2. The appeal turns on the facts of the case and relevant planning law and whether the specific matter is lawful as defined by the 1990 Act. Planning merits, including personal circumstances, are not relevant at any stage in this process. I do not consider a site visit is necessary to determine the appeal and proceed on this basis. The appeal form identifies two s78 appeals referenced in my footnote below¹. The appeals relate to Building C and E and do not have a bearing on this appeal as evidenced by the plans submitted with the LDC application.

Inspector's reasons

3. The onus of proof is firmly upon the appellant whose own evidence does not need to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous. For the described use to be lawful, the evidence needs to show that Building A provided facilities for day-to-day living on or before the relevant date and it was occupied and used as a single dwellinghouse thereafter for a continuous period of four years prior to the date of the LDC application (applying s171B(2)² of the Act).
4. The appellant seeks a LDC on the basis that the existing residential use of Building A as a dwellinghouse is lawful, due to the passage of time³. The claim is that the residential use was instituted in 2015 or 2016, which is before the relevant date of 30 September 2017. The Council, on the other hand, refused to issue the LDC because it felt that the evidence submitted was insufficient to demonstrate lawfulness of the existing residential use.

¹ Appeal ref: same prefix ending in W/22/3294380 and 81, allowed 24 March 2023, for demolition and reconstruction of storage barn (Building C) and change of use to provide 1 No. self-contained dwellinghouse and replacement of existing stables building (Building E), to provide 1 No. self-contained dwellinghouse, C3.

² The 10-year time limit, which came into force in April 2024, does not apply.

³ Within the meaning of s191(2) of the Act.

5. It is important to make a distinction between the terms *use as a single dwellinghouse* from what might normally be regarded *as being a single dwellinghouse* [my emphasis]. Beginning with *Gravesham*, the Courts have consistently held that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day domestic existence⁴. The key message from these judgments and the findings therein serve to illustrate that with each case it is a matter of fact and degree based on the circumstances.
6. Against that background, to my mind, the submissions before me indicates a fundamental misunderstanding because both appeal parties focus on dis/proving the residential use of Building A as a single dwellinghouse. Having regard to well-established case law, it is first necessary to consider evidence showing when the building became a single dwelling and when/how it was occupied and used as a single dwellinghouse without significant interruption [my emphasis].
7. I have reviewed all the written submissions and bundle of evidence submitted with the LDC application and appeal. There was an application for prior approval submitted on 22 July 2014 in relation to the change of use from agricultural buildings to residential comprising of two dwellings. This application related to Building A and C. The Council deemed prior approval was required and the application was refused due to absence of evidence showing the buildings were in agricultural use. Council officers noted partitions had been installed, new insulation had been fitted, a mezzanine floor constructed, and the floors boarded, but there is nothing to show the building afforded facilities for day-to-day living. Officers noted that Building A was not in residential use at the time.
8. The work undertaken in 2014 indicates the building was being converted to a different use. However, the evidence presented does not clearly show Building A was being physically converted into a dwelling prior to the relevant date. This is because the evidence is silent on what happened between 2014 and 2017 and there is little, if any, explanation as to the nature, extent or scale of the building work at the time nor is there any plausible explanation as to when the operations were substantially completed. Based on the information before me, I cannot conclude the change of use had already been instituted in 2014 or thereabouts.
9. The appellant refers to invoices for an oven, electric hob and chimney extractor, dated 19 November 2014, but there is no firm evidence showing the appliances were installed in Building A and used in connection with a residential use. I too agree with the Council's point that the appliances could have been installed in any building. Furthermore, none of the submitted documentary information, including sworn testimony, demonstrate when Building A was physically converted into a dwellinghouse, because the focus is on establishing a residential use of the building. Correspondence, invoices relating to utility services like the internet, are inconclusive as they do not show when the dwelling was formed.
10. To my mind, the kind of documentary information presented does not clearly and precisely demonstrate Building A had been physically converted into a dwellinghouse on or before the relevant date. This is because the evidence presented does not unambiguously divulge when independent cooking, washing and sleeping facilities were available. My analysis of the first issue is sufficient to conclude the appeal fails. However, for completeness, I will also review the evidence about occupation and use.
11. In that context, tenancy agreements have been provided covering 2015 onwards, but rental agreements of this kind do not necessarily show occupation and use of Building A. There are some discrepancies in the supporting documentary evidence because they refer to Building A as "The Annex at Meadow Farm". That might be considered as a minor point, but there are gaps in the documentary evidence. For example, the rental agreements refer to an inventory showing

⁴ See the case of *Gravesham BC v SSE and O'Brien*, [1983] JPL 306.

what was available in 2015 or 2016. This inventory would have showed available facilities at the time, but it has not been supplied.

12. Additionally, there is no plausible explanation as to how utilities were connected or are paid for. There is no evidence of council tax payments, for instance. It is unclear how the water and electric supply is provided to Building A and when it was installed. The invoice from an internet provider is also inconclusive because it does not show actual occupation and use of Building A. Finally, HM Revenue and Customs taxation record is a summary but returns or actual details have not been provided.
13. Apart from generalised assertions that the Council provides no contradictory evidence, the appellant's own evidence is lacking in specificity and detail. For instance, the evidence presented does not demonstrate the extent of occupation and use over the relevant period and its absence makes it difficult to make comparisons between the nature and scale of the residential use as a single dwellinghouse. So, even if a different view prevails on my findings about when Building A was capable of affording facilities for day-to-day domestic existence, the quantum of the evidence presented about occupation and use is incomplete, lacking in specificity and detail.
14. My decision is likely to be disappointing, but I must determine the appeal based on the written submissions and my analysis and evaluation of the evidence before me. There is insufficient evidence to substantiate the appellant's claims. As the Planning Practice Guidance says at paragraph: 009 Reference ID: 17c-009-20140306, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

Conclusion

15. Drawing all the above threads together, on the circumstances of this case and on the balance of probability, I find that the Council's refusal to grant an LDC in respect of the retention of existing residential use at Building A was well-founded albeit for different reasons.
16. For all the above reasons, and having regard to all other matters raised, I conclude that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the Act.

A U Ghafoor

INSPECTOR